

May 15, 2012

Michael Casinelli
3755 Avocado Blvd., #442
La Mesa, CA 91941

Re: Your Request for Advice
Our File No. A-12-076

Dear Mr. Casinelli:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”)¹ and is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) There are other bodies of law, separate and apart from the Act’s conflict-of-interest provisions that may apply to your situation. We urge you to check with the County Counsel’s office to determine whether any other laws are applicable in light of the facts you present.

QUESTION

Does the Act prohibit you from providing services to a firm under contract with an Indian tribe that is proposing building a casino that may require use of county access roads where you, as a member of a San Diego County Community Planning Group (the “Planning Group”), will be making a recommendation to oppose the project?

CONCLUSION

No. In making recommendations to county staff, which then make recommendations to the Board of Supervisors, the ultimate decisionmaker, members of the planning group do not have decision-making authority.

FACTS

You are the chair of the Planning Group for the geographic areas of Jamul and Dulzura (the “Planning Group”). Members of the Planning Group serve without compensation. The Planning Group is concerned about a proposal by the Jamul Indian Village to build a gaming

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

casino in Jamul. The proposal is very contentious between the Indian Village and local citizens, as well as the local fire department, local schools, Caltrans, the California Highway Patrol, California Department of Fish and Game and the County Sheriff's Department. Among their concerns are infrastructure deficiencies in the area and public safety. The Planning Group's role is to represent the interests of local citizens and to determine whether and how to oppose the proposed casino.

Approval of the project by the county's Department of Planning and Land Use (the "Planning Department") is not required because the casino will not be on county land, but, rather, on tribal land. Issues regarding access, which are of great concern, are within the jurisdiction of the California Department of Transportation. The project must also be approved by certain federal agencies.

You are the owner of a marketing research company that conducts research for dozens of clients, including public relations firms, on a contracted project-by-project basis.

The Jamul Indian Village recently hired a public relations firm (the "PR Firm") that has been a repeat client of yours in the past, and it is anticipated that the firm will want you to work on a new project. In one project, involving the Port of San Diego Airport Authority (the "Port Authority"), your company was part of the firm's team on their bid for the project, which was prior to the time the tribe hired the firm. The bid has now come to fruition, and the Port Authority would like your company to start the market research part of the project. In another project, involving the San Diego Association of Governments, your company was also part of the bid team, and your part of the project is just now being required. In addition, the firm has another client, a local maritime museum, that may have marketing research needs, and the firm wants you to submit a bid for the work.

You ask whether your position as a member of the Planning Group creates a conflict-of-interest in connection with your work for the firm.

ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials will "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which the official knows or has reason to know the official has a financial interest. A "public official" is defined in Regulation 18700(a)(1) as follows:

"(a) 'Public official at any level of state or local government' means every natural person who is a member, officer, employee, or consultant of a state or local government agency.

“(1) ‘Member’ shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission has decision-making authority whenever:

“(A) It may make a final governmental decision;

“(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

“(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.”

According to the information you have provided, the Planning Group’s purpose is to assist the Planning Department in considering applications for projects located in the incorporated areas of the county. After reviewing the application and making any necessary inspections, the Planning Group makes recommendations to the Planning Department to approve or deny an application in its entirety, or to approve the application subject to certain conditions. The Planning Department then makes recommendations to the Board of Supervisors, taking into account the Planning Group’s recommendations. The Planning Group does not make final governmental decisions and cannot compel or prevent a governmental decision. In addition, because the committee does not make recommendations directly to the decisionmaker, the board of supervisors, there is no history of verbatim approval of the Planning Group’s recommendations without significant amendment or modification by another public official or governmental agency.

Consequently, members of the Planning Group are not members of a decisionmaking board or commission, and, therefore are not “public officials” within the meaning of Section 87100, and are not subject to the Act’s conflict-of-interest provisions.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl